IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1591 OF 1996

Rajpat Rammanohar Mishra ..Petitioner.

Vs.

Municipal Corporation for Greater Bombay ..Respondents.

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Mr. H.S. Shreepad Murthy for the Petitioner.

Mrs. A.R. Joshi for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

25th January, 2005.

P.C. :

1. The Petitioner has set up a case that he is carrying on a panbidi business at Juhu Tara Road since 1954 in premises admeasuring 10 ft x 10 ft. A rear portion of 15 ft x 12 ft was alleged to have been forcibly demolished by the landlord in 1986. According to the Petitioner his establishment was registered under the Shops and Establishments Act

and the licence was issued initially by the Municipal Corporation on 27th April, 1984. The licence was renewed till 31st December, 1987. According to the Petitioner, the landlord forcibly demolished a part of the premises in 1985-86 whereupon a suit was initially instituted by the Petitioner before the Court of Small Causes. On 10th February, 1987 in interim proceedings therein the Small Causes Court is stated to have directed the restoration of the supply of electricity and water. A copy of the aforesaid order has been annexed to the proceedings before the Court. Thereafter according to the Petitioner the landlord instigated the Municipal Corporation to issue a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888. The Petitioner thereupon filed suit No.255 of 1987 in the City Civil Court in which a Notice of Motion that was taken out by the Petitioner was made absolute on 7th June, 1993. Again in the month of 1993 it was alleged that there was a threat of demolition by the Municipal Corporation upon which the Petitioner is stated to have filed another suit (5240 of 1993) before the City Civil Court. It is alleged that an incident

thereafter took place in which an attempt was made to demolish the premises following which a Notice of Motion was taken out by the Petitioner (Notice of Motion 6633 of 1993 in L.C. Suit 5340 of 1993) before the City Civil Court. According to the Petitioner, an order was passed on 2nd December, 1993 by the City Civil Court permitting the restoration of the premises in the condition in which they were prior to the incident. The grievance of the Petitioner in these proceedings is that after the issuance of the notice under Section 351 the Municipal Corporation failed to renew the licence. The Petitioner had filed a representation dated 10th September, 1993 for renewal which was not dealt with. However, the Petitioner was sought to be prosecured for carrying on business without a licence under Section 394 of the Mumbai Municipal Corporation Act, 1888. The prayer in these proceedings is for a writ of mandamus directing the Municipal Corporation to renew the licence of the Petitioner under Section 394/ 412-A of the Act.

2. When this Petition was admitted on 5th August, 1996 interim relief was granted in terms of prayer

clause (b) by which the Respondents were restrained from taking any action against the Petitioner on the ground that he was carrying on business without a valid licence. Counsel appearing for the Petitioner states that the Petitioner would now file a comprehensive representation before the Municipal Corporation for the renewal of the licence placing on record all the relevant circumstances including the subsequent developments in the case. Counsel has submitted that on 8th September, 2001 L.C. Suit No.255 of 1987 was partly decreed by the City Civil Court, permitting the Municipal Corporation to pass a final order until which the premises were to be protected. This Petition is accordingly disposed of by permitting the Petitioner to file a representation before the competent authority of the Municipal Corporation for the renewal of the licence. The Municipal Corporation shall deal with such application in accordance with law after furnishing to the Petitioner an opportunity of being heard and pass orders thereon within a period of two months. The Petitioner shall appear before the Ward Officer/ K-West Ward on 14th February, 2005 on

which date the Petitioner shall file his representation. The Ward Officer shall then issue necessary directions for the disposal of the representation of the Petition within the aforesaid time after furnishing to the Petitioner an opportunity of being heard.

3. Until the representation is disposed of, the interim order which was passed in these proceedings on 9th August, 1996 shall continue to operate.

The Writ Petition is accordingly disposed of.